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In The

Supreme Court of the United States

OCTOBER TERM, 1982

IN RE INTERNATIONAL HARVESTER COMPANY and IH STEEL CORPORATION,

Petitioners.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRITS OF PROHIBITION AND MANDAMUS TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS AND THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

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INTRODUCTION

This brief is filed to apprise the Court that since this petition was filed on February 16, 1983, Congress has not acted to resolve bankruptcy jurisdiction[1] and extensive judicial time is being devoted to a variety of jurisdictional issues. This brief discusses the recent decisions, not previously available to petitioners, addressing challenges to the current exercise of bankruptcy jurisdiction by the district and bankruptcy courts.[2] These cases further illustrate the confusion and chaos that reign in the lower courts as they grapple

[1] Widely differing bills reported separately by House and Senate committees have not been voted on in either body.

[2] In addition to the cases discussed herein, petitioners are aware of two pending cases in which the Courts of Appeals for the Second and Sixth Circuits have been asked to rule on this issue. *See In re Tennessee Valley Authority*, No. 83-3012 (2d Cir. filed March

(footnote continued on next page)

in a variety of situations to reconcile this Court's decision in *Northern Pipeline Construction Co.* v. *Marathon Pipeline Co.*, 102 S. Ct. 2858 (1982), with the local rules that have been promulgated by every district court in the nation. The continued flood of challenges to the jurisdiction of the bankruptcy and district courts and the variegated and inconsistent solutions being fashioned by the lower courts demonstrate the need to "expedite the settlement of the important question involved." *See Ex Parte United States*, 287 U.S. 241, 249 (1932).

STATUTE AND RULES INVOLVED

This supplemental brief discusses:

28 U.S.C. §1331

28 U.S.C. §1332

28 U.S.C. §1334

28 U.S.C. §1471

Fed. R. Civ. P. 53

The texts of these provisions are all contained in the Appendix to the Petition for Writs of Prohibition and Mandamus, previously filed.

(footnote continued from preceding page)

3, 1983) (petition for writs of prohibition and mandamus); *White Motor Corp.* v. *Citibank*, No. 82-3638 (6th Cir. argued February 24, 1983).

Also, Judge Fisher of the Bankruptcy Court for the Northern District of Illinois ruled from the bench on March 21, 1983 that federal bankruptcy jurisdiction continues to exist over a "plenary" adversary proceeding involving purely state law claims. He held both that §1471(a) and (b) survive *Northern Pipeline* and that §1334 is sufficiently broad to encompass jurisdiction over a plenary proceeding. *One-eighty Investment, Ltd.* v. *First International Bank (In re One-eighty Investment Ltd.)*, No. 81B-8142, Adv. No. 82A-1228 (Bankr. N.D. Ill. argued and oral ruling on March 21, 1983).

ARGUMENT

This brief summarizes the opinions of one court of appeals, six district courts, and ten bankruptcy courts, all of which were rendered between January 13, 1983 and March 5, 1983.[3] All seventeen opinions wrestle with whether any federal jurisdiction continues over bankruptcy proceedings and matters in the light of this Court's holding in *Northern Pipeline*. Few of the seventeen opinions reach the identical conclusion. The unabated flood of challenges to federal court bankruptcy jurisdiction shows that the issue presented by this Petition "is of such a nature that it is peculiarly appropriate that . . . action by this Court be taken." *Ex Parte United States*, 287 U.S. 241, 249 (1932).

In *Braniff Airways, Inc.* v. *Civil Aeronautics Board (In re Braniff Airways, Inc.)*, No. 83-1048 (5th Cir. February 28, 1983) (not reported), *aff'g*, 10 Bankr. Ct. Dec. 30 (N.D. Tex. January 20, 1983), the Fifth Circuit affirmed a district court decision holding that the exercise of bankruptcy jurisdiction was valid. The Court of Appeals' one paragraph per curiam decision holds that *Northern Pipeline* did not invalidate 28 U.S.C. § 1471(a) and (b). It alternately holds that the "old" 28 U.S.C. § 1334 remains effective until 1984.

The district court's more detailed opinion in *Braniff* held that jurisdiction under § 1334 extends only to cases of "summary jurisdiction." 10 Bankr. Ct. Dec. at 32. It acknowledged that, if § 1471(a) and (b) were invalidated by *Northern Pipeline*, federal jurisdiction over cases involving "plenary jurisdiction", such as that presented by this Petition, would require an independent jurisdictional predicate, such as § 1331 or § 1332:

> The parties in any civil proceedings which are "related to" bankruptcy cases, and which involve purely state

[3] As with the initial Petition, copies of all unreported cases have been lodged with the Clerk of the Court.

> law questions in which there is no diversity, may raise such jurisdictional questions on a case by case basis.

Id. at 32 n.4. Thus, while upholding jurisdiction in that case, the district court in *Braniff* recognized that federal jurisdiction over a case such as petitioners' depends solely upon the continued validity of §1471(a) and (b).

In *Walter E. Heller & Co.* v. *Matlock Trailer Corp. (In re Matlock Trailer Corp.)*, No. 382-2778, Adv. No. 382-755, Gen. Docket No. 3:83-X-5 (M.D. Tenn. February 23, 1983) (not reported), the court held that §1471(a) and (b) survived this Court's decision in *Northern Pipeline* and that the district courts also have bankruptcy jurisdiction pursuant to §1334. Slip op. at 9-13. Regarding §1334, the court stated, "the jurisdiction granted by §1334 is sufficiently broad to give this court original and exclusive jurisdiction over all matters and proceedings relating to the administration of the bankrupt's estate and the property within the court's possession." *Id.* at 13. *Matlock* thus impliedly recognizes that jurisdiction over an adversary proceeding such as that involving petitioners cannot be predicated in §1334.

Although holding that district court jurisdiction over bankruptcy matters exists after *Northern Pipeline*, *Matlock* invalidated the local rule requiring the "wholesale referral" of all bankruptcy cases to the bankruptcy judges. *Id.* at 20. It found the referral was invalid under Rule 53 of the Fed. R. Civ. P. both because there was no showing of exceptional circumstances and because the "judicial power delegated to the non-Art III bankruptcy judges," exceeded the "maximum allowable under the provisions of Rule 53." *Id.*

In *Color Craft Press, Ltd.* v. *Nationwide Shopper Systems, Inc. (In re Color Craft Press, Ltd.)*, No. 81M-3184, Civ. No. 82PM-974 (D. Utah February 22, 1983) (not reported), the court held that *Northern Pipeline* did not invalidate § 1471's grant of bankruptcy jurisdiction to the district courts and that § 1334 provides the district court with an alternate basis for bankruptcy jurisdiction. The court also held that the local

rule, delegating jurisdiction to the bankruptcy judges, is a legitimate referral, consistent with the traditional use of "special masters, general masters, and magistrates." Slip op. at 8. Significantly, in defending the referral to the bankruptcy judges, the court cites no authorities on referrals to masters and does not consider the implications of Rule 53. *See id.* at 8-10. In fact, the only authorities cited in support of the referral to the bankruptcy court are *In re Northland Point Partners*, No. 82-5387 (E.D. Mich. January 7, 1983),[4] *In re Braniff*, No. 4-221-E (N.D. Tex. January 20, 1983), and E. Warren, *The Rights of Margin Customers Against Wrongdoing Stockbrokers*, 9 (Plimpton 1941). *See Colorcraft*, slip op. at 9 & n.5.

Otero Mills, Inc. v. *Security Bank & Trust*, Misc. No. 83-94, Adv. No. 82-373-M (D.N.M. February 28, 1983) (not reported), held that § 1471(a) and (b) continue to confer jurisdiction over bankruptcy matters upon the district courts. Slip op. at 5. Alternately, the court held that § 1334 is a source of district court jurisdiction. The court did not consider whether the delegation of district court jurisdiction to bankruptcy judges was valid.

In *Unsecured Creditors' Committee For International Titanium Corp.* v. *Equibank (In re International Titanium Corp.)*, No. 83-160 (W.D. Pa. February 18, 1983) (not reported), the court found that it had jurisdiction over an adversary proceeding that involved the interpretation of Pennsylvania commercial law. The court relied upon *Northland Point Partners'* holding that the local rule was valid and also stated, "[t]his Court has authority to entertain this matter pursuant to the fundamental power of equity to hear bankruptcy matters." Slip op. at 2 (as printed by Lexis).

In *KFC Corp.* v. *Milton*, No. 82-378-N & 82-537-N (E.D. Va. January 25, 1983) (not reported), the court found no bankruptcy court jurisdiction over an adversary proceeding

[4] A later opinion in this case is reported at 10 Bankr. Ct. Dec. 95.

against the sole shareholder of the debtor corporations. The court stated:

> The cases which this Court is withdrawing from the Bankruptcy proceedings are cases which, but for Congress' unconstitutional attempt at broadening the Bankruptcy Court's jurisdiction, the Bankruptcy Court would not have had jurisdiction.

Slip op. at 2 (as printed by Lexis). Apparently because federal question jurisdiction existed over a claim of trademark infringement, the district court's jurisdictional authority was not in issue.

Beyond *KFC Corp.*, no court of appeals or district court judge who has participated in the promulgation of a local rule has found it invalid. Recent bankruptcy court decisions, on the other hand, range from finding no jurisdiction over bankruptcy matters to upholding the entire jurisdictional scheme as promulgated by the local rules, with several permutations in between. *See Warren* v. *Miami Valley Production Credit Association (In re Sheehan)*, No. 3-81-72, Adv. No. 3-81-832 (Bankr. S.D. Ohio March 5, 1983) (not reported) (no bankruptcy court jurisdiction over an adversary proceeding involving questions of state law, but matter decided anyway based on agreement of the parties waiving the jurisdictional issue[5]); *Doctor* v. *Gleicher (In re Stillman)*, 10 Bankr. Ct. Dec. 5, 7 (Bankr. D.Md. January 13, 1983) (followed local rule because "it would be an act of judicial anarchy for this court not to follow a rule adopted unanimously by the judges of its appellate court"); *MPM Worldwide Corp.* v. *Sentinel Telecommunications Systems, Inc. (In re Sentinel Energy Control Systems, Inc.)*, Nos. 83-67-L & 83-68-L, Adv. Nos. 83-97-L, 83-98-L & 83-106-L (Bankr. D. Mass. February 23, 1983) (not reported) (no bankruptcy court jurisdiction over counterclaim by debtor against claimant, although bankruptcy court has jurisdiction over assets in the debtor's possession); *Tip-pa-hans Enterprises,*

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[5] It is beyond question that jurisdiction cannot be created by consent of the parties. See Petition p. 25.

Inc. v. *Atco Electric Co. (In re Tip-pa-hans Enterprises, Inc.)*, 10 Bankr. Ct. Dec. 85 (Bankr. W.D. Va. February 23, 1983) (bankruptcy court will conduct hearing in adversary proceeding and submit proposed findings of facts, conclusions of law, and order to district court for approval); *In re Priebe Farms*, WM13-82-106 (Bankr. W.D. Wis. February 4, 1983) (not reported) (follows decision of Bankruptcy Court in *Matlock Trailer*, holding that jurisdiction exists over all cases filed before December 24, 1982); *Herrera* v. *Weaver Construction Co. (In re Herrera)*, 10 Bankr. Ct. Dec. 123 (Bankr. D. Colo. February 2, 1983) (*Northern Pipeline* did not invalidate the district court jurisdiction over bankruptcy proceedings but the local rule is inconsistent with Fed. R. Civ. P. 53 and is otherwise invalid).

See also Oklahoma Natural Gas Co. v. *Mahan & Rowsey, Inc. (In re Mahan & Rowsey, Inc.)*, 10 Bankr. Ct. Dec. 29 (Bankr. W.D. Okla. January 28, 1983) (*Northern Pipeline* deprives district court of jurisdiction over state law claims raised in adversary proceeding); *Lifeguard Industries, Inc.* v. *Sav More Insulation (In re Lifeguard Industries, Inc.)*, No. 1-82-1633, Adv. No. 1-82-392 (Bankr. S.D. Ohio January 19, 1983) (not reported) (follows *Northland Point Partners*, upholding both district court's jurisdiction and referral to bankruptcy judges); *Kay Grose Rentals* v. *Johnson (In re Johnson)*, 10 Bankr. Ct. Dec. 8 (Bankr. S.D. Ohio January 6, 1983) (follows *Schear Realty & Investment*, holding that *Northern Pipeline* invalidated the district court jurisdiction under §1471(a) and (b), but holds that jurisdiction exists under §1331 to determine the dischargeability of a debt); *In re Egeria Societa Per Azioni di Navigazione*, 9 Bankr. Ct. Dec. 1312, 1314 (Bankr. E.D. Va. January 14, 1983) (allows bankruptcy court jurisdiction over "constitutional reconstructive debtor-creditor relations on purely bankruptcy matters," but finds local rule is invalid because it does not provide for de novo hearing by district court as to "related proceedings" adjudicated in bankruptcy court).

CONCLUSION

For the reasons set forth in the initial Petition, none of the purported jurisdictional bases relied upon in the cases mentioned above are sufficient to justify the exercise of jurisdiction by either the district court or bankruptcy court over the state law claims in the adversary proceeding in which the petitioners are parties. The continuous deluge of challenges in the district and bankruptcy courts underscores the importance of resolving this issue now. Petitioners renew their request that the Court exercise its discretion to grant the appropriate extraordinary writs.

Respectfully submitted,

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